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June 12, 2007

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: July 26, 2006

Case Number: TSO-0419

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter "the Individual") for access authorization. The regulations governing the Individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the Individual is eligible for access authorization. For the reasons detailed below, the Individual is not eligible at this time.

I. BACKGROUND

The Individual worked for a DOE contractor and held a clearance from 1991 to 1995. The clearance was granted after a background investigation and personnel security interview. DOE Ex. 19. In 1994, the Local Security Office (LSO) asked the Individual to respond to information received in conjunction with a reinvestigation. The matter did not go any further, however, because the clearance was administratively terminated in 1995 when the Individual resigned his position.

In 2004, the DOE contractor rehired the Individual and requested reinstatement of his clearance. The Individual submitted a Questionnaire for National Security Positions (QNSP). DOE Ex. 17. After a background investigation, the LSO interviewed the Individual. DOE Ex. 18. During the interview, the Individual answered questions, including ones related to alcohol and drug use. The LSO referred the Individual to a DOE consulting psychiatrist (the DOE psychiatrist) for an evaluation.

The DOE psychiatrist interviewed the Individual in March 2006 and issued a report the same month. DOE Ex. 12. The DOE psychiatrist opined that, from 1998 to 2002, the Individual suffered from alcohol abuse. *Id.* at 18. The DOE psychiatrist also opined that the Individual had used alcohol habitually to excess since 1988, except for a period of one to two years during the mid-1990s. *Id.* at 19. The DOE psychiatrist stated that adequate evidence of rehabilitation and reformation would be (i) participation in Alcoholics Anonymous (AA) for at least a year and abstinence for two years or (ii) participation in an alcohol treatment program for six months and abstinence for three years. *Id.* Finally, the DOE psychiatrist stated that, in the absence of a rehabilitation program, adequate evidence of reformation would be abstinence for five years. *Id.*

In May 2006, the LSO notified the Individual of its security concerns. The Notification Letter cited (i) use of alcohol habitually to excess, 10 C.F.R. § 710.8(j) (Criterion J), (ii) illegal drug use, 10 C.F.R. § 710.8(k) (Criterion K), and (iii) conduct inconsistent with honesty, trustworthiness, and reliability, 10 C.F.R. § 710.8(l) (Criterion L). For the Criterion J concern, the Notification Letter cited the Individual's description of his alcohol consumption, and various alcohol-related incidents, including a 1994 arrest for disorderly conduct, a 2001 arrest for driving under the influence of alcohol (DUI), and a 2002 citation for being in a park after closing. DOE Ex. 1 at 1-2. For the Criterion K concern, the Notification Letter cited the Individual's description of his marijuana use, including an incident in June 2005. *Id.* at 2. Finally, for the Criterion L concern, the Notification Letter cited some of the alcohol-related incidents, the marijuana use, and a curfew violation that appeared to have arisen in connection with drinking while in secondary school. *Id.* at 3.

The Individual responded to the Notification Letter and requested a hearing. In his response, the Individual conceded the alcohol-related arrests and the June 2005 marijuana use. On the other hand, the Individual disputed the accuracy of some of the statements about the incidents, as well as some statements attributed to him concerning the extent of his alcohol and marijuana consumption.

On December 1, 2006, I was appointed to serve as the hearing officer. I held a pre-hearing conference and convened the hearing. At the hearing, DOE Counsel presented one witness: the DOE psychiatrist. The Individual testified and presented nine witnesses: six family members, a friend, a co-worker, and a

clinical psychologist. Subsequently, the Individual and the DOE psychiatrist provided additional testimony by telephone.

II. THE HEARING

A. The Individual

The Individual testified that his problems as a teenager and young adult were attributable to the fact that he did not know where he wanted to go in life. Tr. at 119-20. The Individual did not dispute that he drank excessively in the past, although he testified that the descriptions of his consumption were, in some instances, overstatements. He attributed some to semantic issues, such as the definitions of "hangover" and "intoxication." *Id.* at 126-27, 130. He attributed others to his "guessing" when answering the DOE psychiatrist's interview questions. *Id.* 129-30.

Concerning recent years, the Individual testified that he settled down around 2002, when he married and then became a father. Tr. at 130. The Individual testified that he decided to quit drinking in October 2006:

I felt like [DOE] felt I had a problem. I feel like I may have before I was married. I think my problem was in college and maybe high school, because I was probably drinking out of control per se back then, when I was much younger.

Id. at 134. The Individual testified that, with the exception of a few beers in December, he has remained abstinent. *Id.* at 216. The Individual concluded, "I've gone, grown up, gone past there. I've got responsibilities. I got goals in life that I want to meet. And I'm not going to allow alcohol to stop me I mean, to me, that's just - doesn't make sense." *Id.* at 134-35.

As for the June 2005 marijuana use, the Individual testified that the use occurred on his birthday at a "barbecue/party":

... I was drinking, and I smoked cigarettes, so I would go outside, and they were smoking, you know, certain people, at first you know, I didn't - they were off in the corner. I would just go outside and smoke cigarettes, because you had to smoke outside, so - but that was - as the night went on, later in the evening, I decided to join in for some crazy reason. I just - was enjoying myself, and I was a little bit drunk, and I

decided to smoke for some reason. I don't know why I did that.

Tr. at 152. When asked by the DOE Psychiatrist if alcohol could have affected his judgment, the Individual stated, "Probably. I was pretty drunk." Id. at 154.

B. Individual's Family

The Individual's wife testified that they have been married for almost five years. Tr. at 43. The Individual's wife is not certain when he stopped drinking but that it's "been a long time." Id. at 46. When asked if she ever saw him drink six or seven beers over a three-hour period, she said "no." Id. at 46. While watching football, the Individual might have one or two beers, with three beers being the exception. Id. The Individual's wife does not believe that he had a drinking problem, and she believes that the Individual would "absolutely" be able to remain abstinent for the two-year period recommended by the DOE psychiatrist "if that's what it takes" to resolve the concern. Id. at 50.

The Individual's uncle testified that, for the past four years, he has seen the Individual every day at work; he also sees the Individual outside of work at family functions. Tr. at 32, 33. The Individual's uncle has never seen the Individual intoxicated and does not believe that he has an alcohol problem. Id. at 30. The Individual's uncle did not see the Individual consume alcohol at the family's Christmas gathering and, in fact, has not seen the Individual consume alcohol in the recent past. Id. at 35-36.

The Individual's mother testified that she saw a change in her son when he got married and that "he's just settled down" and is "a good dad, good husband." Tr. at 39. The Individual's mother has "never seem him drunk." Id. at 40. She stated that it was about six months since she saw him consume any alcohol. Id. at 41.

The Individual's grandmother testified that she has never seen the Individual "drunk." Tr. at 72. She sees the Individual "three to five times a week," either after work or on the weekends. Id. at 75. She does not remember the last time she saw him consume alcohol, but she knows that he did not consume alcohol when the family got together for Christmas. Id. at 73-74.

The Individual's father-in-law testified that he has known the Individual for about six years. Tr. at 63. The father-in-law has had "fairly frequent contact with [the Individual] in social

situations," has seen him drink, but has never seen him "inebriated." *Id.* The father-in-law does not think that the Individual has a drinking problem. *Id.* at 66. The Individual told the father-in-law about the problem with his clearance and of his decision to quit drinking. *Id.* at 67. The father-in-law noted that wine was available at Thanksgiving dinner and the Individual declined. *Id.* at 68.

The Individual's brother-in-law testified that he has known the Individual since they were friends in high school. *Tr.* at 84. The brother-in-law described the Individual's maturation and stated that he does not drink to excess. *Id.* at 87-90. The Individual had a beer or two with the brother-in-law during the Christmas holidays. *Id.* at 87. When told about the June 2005 marijuana use, the brother-in-law was surprised and thought that it was an out-of-character lapse in judgment. *Id.* at 92-93.

C. The Individual's Friend

The friend testified that he was known the Individual for about 15 years. *Tr.* at 103. The friend does not believe that the Individual has a "drinking problem." *Id.* at 106. In the last two years, the friend attended a concert with the Individual and his wife; when asked if the Individual was intoxicated, the friend stated that he did not see signs of intoxication but was not sure whether the Individual would have been legally intoxicated. *Id.* at 117.

D. The Individual's Co-worker

The Individual's co-worker testified that he has known the Individual since the early 1990's when the Individual first worked for the contractor. The co-worker testified that he has socialized with the Individual a few times and never seen him drink alcohol. *Tr.* at 78. The co-worker testified that the Individual is a "good worker." *Id.* at 80.

E. The Clinical Psychologist

The clinical psychologist testified that she has a doctoral degree and that she is the director of a program for substance abuse disorders. *Tr.* at 10-11. She testified that she interviewed the Individual individually once and then saw him during an education class. *Id.* at 19. The psychologist's understanding was that the Individual's serious drinking was in college, that he had not drunk to excess since his 2001 DUI, that he recently stopped drinking,

and that he was motivated to continue his abstinence. *Id.* at 14-15. She indicated that she was unaware of the extent of his history of excessive alcohol use, but she considered his prognosis "good." *Id.* at 10-15. The psychologist stated that the Individual had attended relapse prevention classes and indicated that he was fully engaged. Tr. at 27-28.

F. The DOE Psychiatrist

The DOE psychiatrist testified concerning his report and the testimony presented. Consistent with his report, the DOE psychiatrist testified that the Individual has a history of alcohol abuse and consumption of alcohol habitually to excess. Tr. at 167, 174. The DOE psychiatrist noted that the DOE did not define what constituted use of alcohol "habitually to excess" and stated that his definition was "being intoxicated four or more times a year." *Id.* at 168-69. The DOE psychiatrist stated that, in his interview with the Individual, he asked the Individual how many times in the past year he drank six 12-ounce bottles of beer in three hours and the Individual responded, "Six or seven times." *Id.* at 171-72, 193; DOE Ex. 12 at 13. Accordingly, the DOE psychiatrist testified, he concluded that in the year immediately preceding the interview, the Individual had consumed alcohol "habitually to excess." *Id.* at 172-73, 214.

The DOE psychiatrist estimated that the Individual's current risk of relapse - use of alcohol habitually to excess - over the next five years is "[m]ore likely than not." Tr. at 167. Finally, the DOE psychiatrist stated that, in his view, the term "responsible drinking" means "not getting intoxicated, not more than one drink an hour, and not more than three drinks in 24 hours." *Id.* at 164-65.

III. APPLICABLE STANDARD

Under Part 710, certain types of information raise a concern about whether an individual is eligible for access authorization. Derogatory information includes, but is not limited to, the information specified in the regulations. 10 C.F.R. § 710.8. Once a security concern is raised, the individual has the burden to bring forward sufficient evidence to resolve the concern.

In considering whether an individual has resolved a security concern, the hearing officer considers various factors, including the nature of the conduct at issue, the frequency or recency of the conduct, the absence or presence of reformation or rehabilitation, and the impact of the foregoing on the relevant security concerns.

Id. § 710.7(c). The decision concerning eligibility is a comprehensive, common-sense judgment based on a consideration of all relevant information, favorable and unfavorable. *Id.* § 710.7(a). In order to reach a favorable decision, the hearing officer must find that "the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest." *Id.* § 710.27(a).

IV. ANALYSIS

A. Criterion J Concern - Use of Alcohol Habitually to Excess

It is undisputed that the Individual has a history of alcohol-related incidents. They include a 1994 arrest for disorderly conduct, a 2001 arrest for DUI, and a 2002 citation for being in a park after closing. The Individual's history is sufficient to raise a security concern under Criterion J.

The Individual maintains that his excessive alcohol use is in the past. Specifically, he disputes the DOE psychiatrist's conclusion that, in the year immediately preceding the DOE psychiatric interview, he consumed alcohol "habitually to excess," see 10 C.F.R. § 710.8(j). In the alternative, he maintains that his decision to stop drinking is adequate evidence of reformation.

The DOE regulations do not specify what constitutes use of alcohol "habitually to excess." Accordingly, I look to the adjudicative guidelines. See Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information issued on December 29, 2005 by the Assistant to the President for National Security Affairs, The White House (the Adjudicative Guidelines). Guideline G concerns alcohol consumption and cites, as a security concern, the "habitual or binge consumption of alcohol to the point of impaired judgment." Guideline G, ¶ 22(c). Accordingly, use of alcohol "to the point of impairment" is the use of alcohol "to excess."

The DOE psychiatrist's definition of "habitually to excess" is consistent with the Guidelines and the related security concerns. He testified that use of alcohol four or more times a year to the point of intoxication constitutes use of alcohol "habitually to excess." Tr. 168-69. His definition of "to excess" is consistent with the Guidelines because it focuses on drinking to the point of impairment; his definition of habitual as four or more times a year is consistent with the DOE security interests. Accordingly, for the purposes of this proceeding, I find that the use of alcohol

four or more times a year to the point of intoxication is the use of alcohol "habitually to excess."

I find that, during the year immediately preceding the psychiatric interview, the Individual used alcohol habitually to excess. During the psychiatric interview, the Individual reported drinking six 12-ounce cans of beer during a three-hour period on six or seven occasions. DOE Ex. 12 at 13. I recognize that, at the hearing, the Individual testified that his report of "six or seven times" might be a "exaggerated" and that "three or four times" is "probably" more accurate. Tr. at 129-30. I am not persuaded that the Individual's revised estimate is more reliable than the estimate of six or seven occasions that he provided during his psychiatric interview; I see no reason why he would have "exaggerated" his drinking to the DOE psychiatrist or why his estimate at the hearing is a more accurate amount. Based on my finding that the Individual used alcohol habitually to excess during the year immediately preceding his psychiatric interview, 10 C.F.R. § 710.8(j), I turn to whether the Individual has demonstrated adequate evidence of reformation or rehabilitation.

The DOE regulations do not specify what constitutes adequate evidence of reformation or rehabilitation. Accordingly, I again look to the adjudicative guidelines. Guideline G gives examples of adequate evidence of reformation or rehabilitation from an alcohol-related problem. At a minimum, the Individual would have to establish a "pattern of abstinence or responsible use." Guideline G, ¶ 23(b). In this case, the DOE psychiatrist has opined that two years of abstinence and at least a year of counseling are required.

I find that, with the exception of one or two beers in December 2006, the Individual has not consumed alcohol since October 2006. I base this on the Individual's testimony, as well as the corroborating testimony of family and other witnesses. See, e.g., Tr. at 14 (clinical psychologist), 35 (uncle), 41-42 (mother), 55-56 (wife), 216 (Individual).

I do not believe, however, that the Individual's short period of abstinence and relapse prevention classes are sufficient to resolve the security concern. The DOE psychiatrist opined that, given the Individual's history, his current risk of relapse over the next five years is more than 50 percent. *Id.* at 167. Although the clinical psychologist thought that the Individual's prognosis was good, she was not aware of the extent of the Individual's history of alcohol-related problems. *Id.* at 10-14. Accordingly, I

conclude that the Individual has not demonstrated reformation or rehabilitation.

B. Criterion K Concern - Illegal Drug Use

It is undisputed that the Individual used marijuana several times in the late 1980s and in June 2005. This use raises a security concern under Criterion K. The only issue is whether the Individual has presented sufficient evidence to resolve the concern.

If the circumstances indicate that drug use is unlikely to recur, the circumstances may mitigate the security concern. Guideline H, ¶ 26(a). I cannot find that such circumstances are present here.

The Individual's June 2005 marijuana use occurred when he was an applicant for a security clearance. The Individual attributed the use to being "pretty drunk." Tr. at 154. As stated above, I have concluded that the Individual has not mitigated the alcohol-related security concern. Accordingly, I cannot find that the circumstances indicate that the incident is unlikely to recur.

C. Criterion L Concern - Honesty, Reliability, and Trustworthiness

It is undisputed that the Individual has had alcohol-related arrests or citations and has used marijuana. These incidents raise a security concern under Criterion L. My assessment, based on the testimony presented at the hearing, is that lack of maturity and excessive alcohol use accounted for these problems. The most recent legal problems are the 2001 DUI and the 2002 citation. The most recent drug use occurred in June 2005, when the Individual was intoxicated. As explained above, the Individual has not mitigated the alcohol-related concern. Since the Criterion L conduct is alcohol-related, he has not mitigated the Criterion L concern.

V. CONCLUSION

The Individual has not resolved the Criterion J, K, and L concerns set forth in the Notification Letter. For that reason, I cannot conclude that a grant of access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Accordingly, the Individual should not be granted access authorization at this

time. Any party may seek review of this Decision by an Appeal Panel under the procedures set forth at *Id.* § 710.28.

Janet N. Freimuth
Hearing Officer
Office of Hearings and Appeals

Date: June 12, 2007